

(1968) 01 MAD CK 0022

In the Madras High Court

Case No : Writ Petition No. 1002 of 1967

K.M. Rahmath Bibi

APPELLANT

Vs

First Income Tax Officer, Nagapattinam

RESPONDENT

Date of Decision : 29-01-1968

Acts Referred:

Income Tax Act, 1961 — Section 220, 220(3), 220(6), 246

Citation : AIR 1969 Mad 208 : (1969) 72 ITR 73

Hon'ble Judges : Veeraswami, J; Ramaprasada Rao, J

Bench : Division Bench

Advocate : M.R.M. Abdul Karim, P.M. Jaumma Khan and P.L. Meyyappan, for the Appellant; V. Suresham, for Standing Counsel for Central Government, for the Respondent

Final Decision : Dismissed

Judgement

Veeraswami, J.—This is a petition under Article 226 of the Constitution to forbid the respondent from taking any recovery proceedings

against the petitioner's husband in pursuance of an order of assessment made against him on March 22, 1966. The petitioner is the wife of the

assessee and she says that though her husband is a citizen of India, he has been prevented from coming over to India, from Malaya since

September 6, 1965. For the year 1961-62, he returned an income of Rs. 4,500/-, but the respondent added a sum of Rs. 58,000/- and charged

him to tax on a total income of Rs. 62,002/-. A demand was made on the assessee on March 28, 1966, for payment of the balance tax due, that

is, Rs. 32,282.10. Against the order of assessment, the assessee filed an appeal on April 8, 1966, and on the same day, his power-of-attorney

applied for stay of collection of the tax pending disposal of the appeal. The

respondent, by his order dated April 15, 1966, granted time till May 15, 1966, for payment of one-half of the tax demanded and wanted security for the balance, so that the collection thereof might be stayed until the disposal of the appeal or a specified date, whichever was earlier. But the conditions for the stay were not complied with. The respondent accepted the offer on behalf of the assessee to pay a sum of Rs. 5,000/-, but even this amount was not paid. Once again time was granted by the respondent to pay the one-half, but there was default. On June 25, 1966, the Inspecting Assistant Commissioner of Income Tax, Tiruchirapalli, was moved for stay. This officer, by an order of his dated July 25, 1966, granted time for payment of Rs. 16,000/- on or before August, 1966, and on condition of such payment, agreed to stay recovery of the balance of the tax arrear till after the disposal of the appeal, provided security was furnished therefor, on or before August 15, 1966. These conditions were again not complied with, but, instead, on behalf of the assessee, an application was filed before the Commissioner of Income Tax on August 10, 1966, for stay of collection. On December 21, 1966, the Commissioner directed that on payment of Rs. 16,000/- immediately, the demand of the balance of the tax would be stayed till February, 1967, or till the disposal of the appeal by the Appellate Assistant Commissioner, whichever was earlier. It appears pursuant to the Commissioner's orders, the respondent issued two chalangans three days later, one for Rs. 16,000/- and the other for the balance of arrears, and also issued a certificate to the District Collector, Thanjavur, for recovery of the arrears, but with a request not to proceed immediately with the collection, in view of the Commissioner's orders aforesaid. Even then the assessee failed to pay any amount towards the tax arrears. In view of the default, the first respondent on January 11, 1967, levied a penalty of Rs. 1,500/- for the persistent failure to pay the arrears or any part thereof. When the recovery proceedings were proceeded with, the assessee preferred objections thereto on certain grounds. By an order dated May 15, 1967, the Commissioner would appear to have permitted the assessee to pay the sum of Rs. 16,000/- immediately and the holding over of the balance till July 30, 1967, or the disposal of the appeal, whichever was earlier, subject to the furnishing of adequate security. It is not in dispute even this chance was not availed of and the

entire tax continues to be in arrears. The petitioner's contention before us is that the respondent and the officers higher up failed to exercise their discretion properly u/s 220(6) of the Income Tax Act, 1961. According to the petitioner, the conditions contemplated by this provision can only be furnishing of security and not instalmental payments of the arrears. On this view of the scope of Section 220(6), it is said that the refusal to stay the collection of the tax is illegal.

2. In our view, the narrow view of the scope of Section 220(6) cannot be accepted. What is said is that Sub-section (6) should be given a limited scope, as it has to be read in the light of Sub-section (3), which gives discretion to the Income Tax Officer in certain circumstances to extend the time for payment or allow payment by instalments. As a specific provision has been made in the form of Sub-section (3), so runs the arguments for the petitioner, for payment by instalments of the arrears. It stands to reason that read in the light of this provision, Sub-section (6) should be read not as a repetition but as being limited to granting stay on furnishing security.

3. Section 220 deals with collection and recovery of tax, it provides that on service of the demand notice, the tax should be paid within the period of 35 days and that if the demand is not complied with within the time limit, the assessee should be treated as being in default. Sub-section (3) provides that an assessee may, before the expiry of the time fixed in the demand notice for payment, apply for stay and the Income Tax Officer may on such application extend the time for payment or allow payment by instalments, subject to such conditions as he may think fit to impose in the circumstances of the case. Where, however, the assessee has preferred an appeal u/s 246, the Income Tax Officer is given the discretion to treat the assessee as not being in default in respect of the amount in dispute in the appeal, subject to such conditions as he may think fit to impose in the circumstances of the case. When a statute entrusts to an officer, who is a creature of such a statute, a discretion of that nature, it is obviously coupled with a duty to exercise it. The officer has to exercise his discretion according to law and reason, neither arbitrarily nor capriciously. He cannot in exercising his power, take into account any irrelevant or extraneous matter, not germane to the occasion and the exercise of his discretion. This position is well settled and we do not think it necessary to make

extensive citation of authority in support. VETCHA

SREERAMAMURTHY Vs. THE Income Tax OFFICER VIZIANAGARAM, AND ANOTHER., deals with this question with reference to

Section 45 of the Income Tax Act, 1922, which corresponds to Section 220 of the present Income Tax Act Subba Rao, C.J., (as he then was)

and Viswanatha Sastri, J., refer to all the relevant authorities in their judgments and they hold that the discretion conferred by Section 45 of the

Income Tax Act on the Income Tax Officer to treat the assessee, who has not paid the tax demanded, as not being in default, if he has preferred

an appeal, was a power exercisable both against and in favour of the assessee or the State, as the case may be, and that the power was coupled

with a duty to exercise his discretion when the facts which called for its exercise existed and that the fact that the exercise of the power was left to

the discretion of the officer did not exonerate him from discharging his duty. Reference was made by the learned Chief Justice to the classical

dictum in Maxwell:

"According to his discretion" means. It has been said, according to the rules of reason and justice, not private opinion, according to law and not

humour; it is to be not arbitrary, vague and fanciful, but legal and regular; to be exercised, not capriciously, but on judicial grounds and for

substantial reasons. And it must be exercised within the limits to which an honest man competent to the discharge of his office ought to confine

himself, that is, within the limits and for the objects intended by the legislature. These dicta may be summed up in the statement of Lord Esher that

the discretion must be exercised without taking into account any reason which is not a legal one. If people who have to exercise a public duty by

exercising their discretion take into account matters which the Courts consider not to be proper for the guidance of their discretion, then in the eye

of the law, they have not exercised their discretion.

These principles, which we unhesitatingly accept, can be put in no better words. The petitioner's submission before us is not that the respondent

declined to exercise his discretion but in doing so, he has not kept in view the correct intent and scope of Sub-section (6) of Section 220, On her

behalf, reliance is placed on the following observations of Viswanatha Sastri, J., in the decision referred to:

Lastly, it has to be observed that Section 45, of the Income Tax Act is somewhat cryptic in its terms and merely gives the Income Tax Officer

power to declare a person to be not in default pending the appeal. There is no provision for stay similar to Order XLI, Rules 5 and 6, of the Civil

Procedure Code. There is no conferment of an express power of granting a stay of realisation of the tax, though the effect of an order in favour of

the assessee u/s 45 of the Act is a stay. Nor is there a provision for allowing the tax to be paid in instalments or for taking a security for deferred

payment.

And it is argued that in view of this position, the discretion given to the Income Tax Officer, under Sub-section (6) of Section 220 is limited to grant

of stay in the sense that the assessee will not be treated as being in default in respect of the disputed amount in the appeal, subject only to the

condition that security is furnished for that amount. It is true that the power of the Income Tax Officer under Sub-section (6) is in his discretion to

treat the assessee as not being in default in respect of the disputed amount in the appeal, but in a sense and in effect, when the Income Tax Officer

treats an assessee as not being in default, it amounts to stay of collection of the amount in dispute. Sub-section (6), if regard is had to the language

employed therein, does not in so many words say that the discretion entrusted to the Income Tax Officer is to be exercised in a particular manner

and not in any other. Sub-section (6) specifically says that he may exercise his power in his discretion and subject to such conditions as he may

think fit to impose in the circumstances of the case. That, in our opinion, gives a very wide scope to the discretion entrusted to the officer as well as

to the conditions which he may stipulate in the exercise of his discretion. The only limitations appear to be that the conditions stipulated must, in his

opinion, be fit in the circumstances before him. He is not limited, therefore, to treating the assessee as not being in default in respect of the disputed

amount only on condition that the assessee should furnish security. In our opinion, Sub-section (6) is wide enough to cover a stay on condition that

the assessee should pay the disputed amount by instalments either in whole or in part and should furnish security for "the balance.

4. We are also unable to import any limitation into Sub-section (6) through a reading of Sub-section (3). As we said, learned Counsel for the

petitioner compared and contrasted the two provisions and stated that because Sub-section (3) specifically provided for a stay subject to the

condition that the amount in arrear might be paid by instalments, so it followed that in the absence of a repetition of that provision in Sub-section

(6), it will be proper to construe the latter provision as not including a power to impose a condition for instalmental payment. The argument seems

to us to overlook the mutual scope and purpose of the two sub-sections. Sub-section (3) deals with not the disputed tax but the whole amount in

arrear. The power given to the officer is to extend the time for payment or allow payment by instalments, and even then subject to such conditions

as he may think fit to impose in the circumstances of the case. But, in Sub-section (6), the language employed is even wider and the discretion to

be exercised is not limited to extension of time for payment on condition that it will be paid by instalments.

5. It has not been suggested that the respondent or the officers higher up failed to take relevant circumstances or exercised their discretion

arbitrarily. As we said, all that has been said for the petitioner is that under Sub-section (6), the first respondent has no option but to treat the

assessee as not being in default in respect of the disputed amount on condition that he furnished security. We are unable to accept the contention

for the reason we have mentioned.

6. The petition is dismissed with costs. Counsel's fee Rs. 150/-. Learned Counsel for the assessee prays that we may direct the Appellate

Assistant Commissioner concerned to dispose of the appeal expeditiously. We think that this is a reasonable request and we grant it. The

Appellate Assistant Commissioner will dispose of the appeal within three months from to-day.